BRIEF IN SUPPORT OF PETITION.

1. The Decision of the Circuit Court of Appeals Herein Is in Direct Conflict With the Decision of Circuit Court of Appeals of the Second Circuit in Gutbro Holding Company v. Commissioner of Internal Revenue, 138 Fed. (2d) 16.

The basic issue presented to the Court below was whether a statutory merger and consolidation, under California statutes, gave rise to taxable gain or loss. The United States Board of Tax Appeals (now Tax Court of the United States) in *Gutbro Holding Company v. Commissioner*, 47 B. T. A. 374, had for decision the question of whether a statutory merger and consolidation under the New Jersey statutes, gave rise to gain or loss. The Board of Tax Appeals decided that gain or loss resulted. Its decision was appealed to the United States Circuit Court of Appeals for the Second Circuit and that Court reversed the decision of the Board of Tax Appeals.

The exact and identical provisions of the Revenue Act of 1934 were submitted for decision to the Circuit Court of Appeals for the Ninth Circuit in the case at bar and to the United States Circuit Court of Appeals for the Second Circuit in *Gutbro Holding Company v. Commissioner*, 138 Fed. (2d) 16, and the decisions of the two Circuit Courts of Appeals are directly opposed to each other and a definite, clear and unquestioned conflict in decisions has resulted.

The provisions of the New Jersey statutes relating to a merger and consolidation were the same as the basic provisions of the California statutes.

The Government in its brief filed in this cause with the United States Circuit Court of Appeals for the Ninth Circuit cited and specifically relied upon as direct authority for its position the decision of the United States Board of Tax Appeals in *Gutbro Holding Company v. Commissioner, supra,* which has now been reversed.

The United States Circuit Court of Appeals for the Ninth Circuit in its decision cites in two instances and specifically relies upon the decision of the Board of Tax Appeals in *Gutbro Holding Company v. Commissioner, supra,* which decision of the Board of Tax Appeals was reversed by the decision of the United States Circuit Court of Appeals for the Second Circuit.

It is respectfully submitted that the decision below does create a definite conflict with the decision of the Circuit Court of Appeals for the Second Circuit and such conflict should be settled by this Court.

2. The Circuit Court of Appeals Has Decided an Important Question of Federal Tax Law Which Has Not Been But Should be Settled by This Court.

All of the States of the Union provide in their statutory law for the merger and consolidation of parent and subsidiary corporations under and according to the form and pattern followed in the case at bar and as was done in *Gutbro Holding Company v. Commissioner, supra.* The determination of whether the same results in gain or loss and is controlled by the provisions of the revenue

statute relating to the liquidation of subsidiary corporations or is controlled by the provisions of the revenue statute providing for the recognition of neither gain nor loss is a most important question in the proper administration and enforcement of the federal revenue laws.

Counsel for petitioner certifies that in their opinion this petition is well founded and is not interposed for delay.

It is respectfully submitted that this petition should be granted.

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